

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO.:

VILMA M. MENDOZA,
and other similarly-situated individuals,

Plaintiff (s),

v.

LUCERNE BAKERY, INC.
and JORGE J. ROMERO,
individually

Defendants,

COMPLAINT

(OPT-IN PURSUANT TO 29 U.S.C § 216(b))

COMES NOW the Plaintiff VILMA M. MENDOZA, and other similarly-situated individuals, by and through the undersigned counsel, and hereby sues Defendant LUCERNE BAKERY, INC., and JORGE J. ROMERO individually, and alleges:

1. This is an action to recover money damages for unpaid overtime wages, under the laws of the United States. This Court has jurisdiction pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201-219 (Section 216 for jurisdictional placement) (“the Act”).
2. Plaintiff VILMA M. MENDOZA is a resident of Miami-Dade County, Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the Act.
3. Defendant LUCERNE BAKERY, INC. (hereinafter, LUCERNE BAKERY, or Defendant) is a Florida corporation, having place of business in Miami-Dade

County, Florida, where Plaintiff worked for Defendant. At all times material hereto, Defendant was and is engaged in interstate commerce.

4. The individual Defendant JORGE J. ROMERO, was and is now, the owner/partner/officer, and he directed operations of LUCERNE BAKERY, INC. This individual Defendant was the employer of Plaintiff and others similarly situated within the meaning of Section 3(d) of the “Fair Labor Standards Act” [29 U.S.C. § 203(d)].
5. All the action raised in this complaint took place in Miami-Dade County Florida, within the jurisdiction of this Court.

ALLEGATIONS COMMON TO ALL COUNTS

6. This cause of action is brought by Plaintiff as a collective action to recover from Defendants overtime compensation, liquidated damages, and the costs and reasonably attorney’s fees under the provisions of Fair Labor Standards Act, as amended, 29 U.S.C. § 201 *et seq* (the “FLSA or the “ACT”) on behalf of Plaintiff and all other current and former employees similarly situated to Plaintiff (“the asserted class”) and who worked in excess of forty (40) hours during one or more weeks on or after October 2014, (the “material time”) without being properly compensated.
7. Corporate Defendant LUCERNE BAKERY is a bakery/coffee shop located at 7415 Coral Way, Miami, Florida 33155.
8. Defendant LUCERNE BAKERY employed Plaintiff VILMA M. MENDOZA as a bakery and coffee shop attendant, cahier, and cleaning person from approximately

- August 2014, through September 24, 2017, or more than 3 years. However, for FLSA purposes Plaintiff's relevant weeks of employment are 66 weeks.
9. Plaintiff was paid as a tipped employee \$5.15 an hour plus tips received from customers. These tips were collected in a jar, and at the end of the week, were distributed to employees participating in the tip sharing agreement.
 10. While employed by Defendants, Plaintiff worked a regular schedule of 6 days per week, from Monday to Saturday; from 1:00 PM to 6:00 PM (5 hours daily), or 30 hours weekly. However, within the period from August 2015, to February 2017, Plaintiff worked every week more than 40 hours.
 11. For at least 65 weeks Plaintiff worked in the morning shift, and then her regular afternoon shift. Plaintiff worked weeks of 46, 54, 56, and 62 hours. Plaintiff did not take bona fide lunch breaks.
 12. In order to circumvent FLSA regulation regarding the payment of overtime hours, Defendants split the payment of Plaintiff's wages. Defendants Paid Plaintiff for 30 regular hours plus tips once a week; the remaining hours were paid to Plaintiff daily at the regular rate of \$5.15 an hour, and on cash basis.
 13. Defendants did not use any time keeping method and did not provide Plaintiff with any paystub showing basic information about the real number of working hours per week, wage rate, employment taxes deducted etc. Plaintiff was paid strictly on cash basis, and she was required to sign a small notebook acknowledging payment of 30 regular hours.
 14. During the relevant period of employment, Plaintiff worked more than 40 hours every week, but she was not compensated adequately for overtime hours.

15. Therefore, Defendants failed to pay Plaintiff at the rate of time and a half her regular rate, for every hour in excess of 40, that she worked in a week period, according to the Fair Labor Standards Act.
16. On or about February 20, 2017 Plaintiff sustained a fall and broke her leg while at home. Plaintiff was out of work for almost four months. Plaintiff returned to work on June 5, 2017. After this date Plaintiff did not worked more than 30 hours, and then her working hours were reduced even more.
17. On or about September 24, 2017, Defendant fired Plaintiff due to discriminatory reasons.
18. Plaintiff VILMA M. MENDOZA intends to recover unpaid overtime hours, liquidated damages, and any other relief as allowable by law.
19. The additional persons who may become Plaintiffs in this action are employees and/or former employees of Defendants who are and who were subject to the unlawful payroll practices and procedures of Defendants and were not paid regular or overtime wages at the rate of time and one half of their regular rate of pay for all overtime hours worked in excess of forty.

COUNT I:
WAGE AND HOUR FEDERAL STATUTORY VIOLATION of 29 U.S.C. § 207
(a)(1)FAILURE TO PAY OVERTIME; AGAINST ALL DEFENDANTS

20. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-19 above as if set out in full herein.
21. This action is brought by Plaintiff and those similarly-situated to recover from the Employers unpaid overtime compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of

29 U.S.C. § 201 et seq., and specifically under the provisions of 29 U.S.C. § 207. 29 U.S.C. § 207 (a)(1) states, “No employer shall employ any of his employees... for a work week longer than 40 hours unless such employee receives compensation for his employment in excess of the hours above-specified at a rate not less than one and one half-times the regular rate at which he is employed.”

22. The Employer LUCERNE BAKERY, at all times pertinent to this Complaint, was engaged in interstate commerce or in the production of goods for commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s). The Defendant is a bakery and coffee shop, and through its business activity, affects interstate commerce. Defendant has more than two employees recurrently engaged in interstate commerce. The Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do their business, transmits funds outside the State of Florida, and otherwise regularly engages in interstate commerce. Upon information and belief, the annual gross revenue of the Employer/Defendant was at all time material hereto in excess of \$500,000 per annum. Therefore, there is FLSA enterprise coverage.

23. The Plaintiff was employed by an enterprise engaged in interstate commerce, and the Plaintiff’s work for the Defendant likewise affects interstate commerce. Plaintiff was a bakery and coffee shop attendant, and through her daily activities, she regularly completed credit card transactions, she handled, or otherwise worked on goods and/or materials that have been moved across State lines at any time in the course of business. Therefore, there is FLSA individual coverage.

24. Defendant LUCERNE BAKERY employed Plaintiff VILMA M. MENDOZA as a bakery and coffee shop attendant, cashier, and cleaning person from approximately August 2014, through September 24, 2017, or more than 3 years. However, for FLSA purposes Plaintiff the relevant weeks of employment are 66 weeks.
25. Plaintiff was paid as a tipped employee \$5.15 an hour plus tips received from customers.
26. While employed by Defendants, Plaintiff worked a regular schedule of 6 days per week, from Monday to Saturday; from 1:00 PM to 6:00 PM (5 hours daily), or 30 hours weekly. However, within the period from August 2015, to February 2017, Plaintiff worked every week more than 40 hours.
27. For at least 65 weeks Plaintiff worked in the morning shift, and then her regular afternoon shift. Plaintiff worked weeks of 46, 54, 56, and 62 hours. Plaintiff did not take bona fide lunch breaks.
28. In order to circumvent FLSA regulation regarding the payment of overtime hours, Defendants split the payment of Plaintiff's wages. Defendants paid Plaintiff for 30 regular hours plus tips, once a week; the remaining hours were paid to Plaintiff daily, at the regular rate of \$5.15 an hour, and on cash basis.
29. Defendants did not use any time keeping method and did not provide Plaintiff with any paystub showing basic information about the real number of working hours per week, wage rate, employment taxes deducted etc. Plaintiff was paid strictly on cash basis, and she was required to sign a small notebook acknowledging payment of 30 regular hours.

30. During the relevant period of employment, Plaintiff worked more than 40 hours every week, but she was not compensated adequately for overtime hours.
31. Therefore, Defendant failed to pay Plaintiff for overtime hours at the rate of time and one-half his regular rate for every hour that he worked in excess of forty (40), in violation of Section 7 (a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).
32. The records, if any, concerning the number of hours actually worked by Plaintiff VILMA M. MENDOZA, and all other similarly- situated employees, and the compensation actually paid to such employees should be in the possession and custody of Defendant. However, upon information and belief, Defendant did not maintain accurate and complete time records of hours worked by Plaintiff and other employees in the asserted class.
33. Defendant violated the record keeping requirements of FLSA, 29 CFR Part 516.
34. Prior to the completion of discovery and to the best of Plaintiff's knowledge, at the time of the filing of this complaint, Plaintiff's good faith estimate of unpaid wages are as follows:
- a. Total amount of alleged unpaid wages:
Three Thousand Seven Hundred Seventy Dollars and 34/100 (\$3,770.34)
 - b. Calculation of such wages:
Total weeks of employment: more than 156 weeks
Total relevant weeks of employment: 65 weeks
Regular rate: \$5.15
O/T rate: \$10.88-\$5.15 paid=\$5.73 difference
- 1.- Overtime for 66 weeks /worked 46 hours weekly (6 O/T hours)**
\$5.73 O/T Diff. x 6 O/T hours=\$34.38 weekly x 66 weeks=\$2,269.08

2.- Overtime for 16 weeks /worked 54 hours weekly (14 O/T hours)
\$5.73 O/T Diff. x 14 O/T hours=\$80.22 weekly x 16 weeks=\$1,283.52

3.- Overtime for 1 week /worked 56 hours (16 O/T hours)
\$5.73 O/T Diff. x 16 O/T hours=\$91.68

4.- Overtime for 1 week /worked 62 hours (22 O/T hours)
\$5.73 O/T Diff. x 22 O/T hours=\$126.06

Total 1, 2, 3, and 4: \$3,770.34

c. Nature of wages (e.g. overtime or straight time):

This amount represents the unpaid overtime hours.

35. At all times material hereto, the Employer/Defendant LUCERNE BAKERY failed to comply with Title 29 U.S.C. §§ 201-219 and 29 C.F.R. § 516.2 and § 516.4 et seq. In that Plaintiff and those similarly-situated performed services and worked in excess of the maximum hours provided by the Act, but no provision was made by the Defendant to properly pay them at the rate of time and one half for all hours worked in excess of forty hours (40) per workweek as provided in said Act.

36. Defendant LUCERNE BAKERY knew and/or showed reckless disregard of the provisions of the Act concerning the payment of overtime wages as required by the Fair Labor Standards Act and remains owing Plaintiff and those similarly-situated these overtime wages since the commencement of Plaintiff's employment with Defendant as set forth above, and Plaintiff and those similarly-situated are entitled to recover double damages.

37. Defendant never posted any notice, as required by the Fair Labor Standards Act to inform employees of their federal rights to overtime and minimum wage payments.

38. Defendant violated the Posting requirements of 29 U.S.C. § 516.4.

39. At the times mentioned, individual Defendant JORGE J. ROMERO, was owner/president, and he directed operations of LUCERNE BAKERY. Defendant JORGE J. ROMERO was the employer of Plaintiff and others similarly situated individuals within the meaning of Section 3(d) of the “Fair Labor Standards Act” [29 U.S.C. § 203(d)]. In that, this individual Defendant acted directly in the interests of LUCERNE BAKERY in relation to its employees, including Plaintiff and others similarly situated. Defendant JORGE J. ROMERO had financial and operational control of the business, provided Plaintiff with her work schedule, and he is jointly liable for Plaintiff’s damages.

40. Defendants LUCERNE BAKERY, and JORGE J. ROMERO willfully and intentionally refused to pay Plaintiff overtime wages as required by the law of the United States as set forth above and remain owing Plaintiff these overtime wages since the commencement of Plaintiff’s employment with Defendant.

41. Plaintiff has retained the law offices of the undersigned attorney to represent her in this action and is obligated to pay a reasonable attorneys’ fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff VILMA M. MENDOZA and those similarly-situated individuals respectfully request that this Honorable Court:

- A. Enter judgment for Plaintiff VILMA M. MENDOZA and other similarly-situated and against the Defendants LUCERNE BAKERY, and JORGE J. ROMERO on the basis of Defendants’ willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; and
- B. Award Plaintiff actual damages in the amount shown to be due for unpaid half-

time overtime compensation for hours worked in excess of forty weekly, with interest; and

C. Award Plaintiff an equal amount in double damages/liquidated damages; and

D. Award Plaintiff reasonable attorneys' fees and costs of suit; and

E. Grant such other and further relief as this Court deems equitable and just and/or available pursuant to Federal Law.

JURY DEMAND

Plaintiff VILMA M. MENDOZA and those similarly-situated demand trial by jury of all issues triable as of right by jury.

Dated: December 29, 2017

Respectfully submitted,

By: /s/ Zandro E. Palma
ZANDRO E. PALMA, P.A.
Florida Bar No.: 0024031
9100 S. Dadeland Blvd.
Suite 1500
Miami, FL 33156
Telephone: (305) 446-1500
Facsimile: (305) 446-1502
zep@thepalmlawgroup.com
Attorney for Plaintiff

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

VILMA M. MENDOZA

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Blvd., Suite 1500, Miami, FL 33156
Tel: (305) 446-1500

DEFENDANTS

LUCERNE BAKERY, INC. and JORGE J. ROMERO

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- [] 1 U.S. Government Plaintiff
[X] 3 Federal Question (U.S. Government Not a Party)
[] 2 U.S. Government Defendant
[] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- [X] 1 Original Proceeding
[] 2 Removed from State Court
[] 3 Re-filed- (see VI below)
[] 4 Reinstated or Reopened
[] 5 Transferred from another district (specify)
[] 6 Multidistrict Litigation
[] 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case [] YES [X] NO
b) Related Cases [] YES [X] NO
(See instructions second page): JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
29 U.S.C.
LENGTH OF TRIAL via 3 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

[] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD /s/ Zandro E. Palma, Esq.

DATE December 29, 2017

FOR OFFICE USE ONLY

AMOUNT RECEIPT # IFP

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of California

VILMA M. MENDOZA

Plaintiff

v.

LUCERNE BAKERY, INC.
and JORGE J. ROMERO,

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) LUCERNE BAKERY, INC.
Through Its registered Agent
TEODOSIA ROMERO
7419 CORAL WAY
MIAMI, FL 33155-8403

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Boulevard
Suite 1500
Miami, FL 33156

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of California

VILMA M. MENDOZA

Plaintiff

v.

LUCERNE BAKERY, INC.
and JORGE J. ROMERO,

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JORGE J. ROMERO
2650 S.W. 34TH AVE.
MIAMI, FL

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Boulevard
Suite 1500
Miami, FL 33156

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lucerne Bakery Facing Former Employee's Unpaid Overtime Claims](#)
